



The Commonwealth of Massachusetts

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

PROCEDURAL MEMORANDUM

TO: All Parties to D.T.E. 98-57-Phase III (*via E-mail and Regular Mail*)

FROM: Jesse Reyes, Hearing Officer

RE: Request for Comments on Effect of Triennial Review Order

DATE: September 2, 2003

On October 28, 2002, Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon") appealed the Hearing Officer Ruling on Resuming the Procedural Schedule (Oct. 18, 2002). Verizon also filed a motion for stay of the Hearing Officer Ruling pending the commission's decision on Verizon's appeal. The hearing officer granted the motion for stay on November 13, 2002. The Department did not then act on the appeal because the issuance of the Federal Communication Commission's ("FCC") Triennial Review Order¹ was believed to be imminent and would provide guidance for the Department's review of Verizon's PARTS tariff. On August 21, 2003, the FCC released the Triennial Review Order, in which the FCC found that competitors are not impaired without unbundled access to packet switching, and therefore precluded unbundled access to incumbent LECs' packet-based networks and associated fiber transmission facilities. Triennial Review Order, at ¶¶ 535-41 and Part VI.A.4.a.(v); see also 68 Fed. Reg. 52,276, 52,297 (Sept. 2, 2003) (to be codified at 47 C.F.R. § 51.319(a)(2)).

The hearing officer requests that parties file comments, by October 2, 2003, on whether the Department's review of Verizon's PARTS offering is preempted by, or is otherwise inconsistent with, the Triennial Review Order and promulgated regulations. Reply comments must be filed by October 9, 2003. If no comments are received by that date, the Department will determine whether to terminate the remainder of this investigation without findings.

¹ Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98; and Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, FCC 03-36 (rel. August 21, 2002) ("Triennial Review Order").